# Exhibit E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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**TAILORED LIGHTING, INC.,**

*Plaintiff,*

*vs.*

**OSRAM SYLVANIA PRODUCTS, INC.,**

*Defendant.*

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# Exhibit F

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

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TAILORED LIGHTING, INC.,

Plaintiff,

-vs-

Civil Action No.
04-CV-6435 MAT

OSRAM SYLVANIA PRODUCTS, INC.,

Defendant.

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Examination Before Trial held at the LAW OFFICES OF HISCOCK & BARCLAY LLP, 2000 HSBC Plaza, Rochester, New York 14604 on March 14, 2008, commencing at 8:58 a.m.

DEPOSITION OF: Mark D. Fairchild, Ph.D.

REPORTED BY: SINEAD R. WILDER

to measure spectral -- measure the spectral power distribution with a spectroradiometer?

A. I don't know how I would define level of skill. It takes some training. I could probably teach my twelve-year-old daughter to do it, so it's possible. I would say a typical undergraduate science student could do it fairly easily, once they're instructed how.

Q. What in particular would you need to instruct the person?

MR. OROPALLO: Object to the form of the question.

Q. You say you'd have to instruct the person how?

A. (Nodding in the affirmative.)

Q. How would you have to instruct the person how?

A. You'd have to familiarize them with just the general operation of the instrument, as far as any software to record the data, how to set up the lamps, how to apply the electrical current and control the power supply to be sure that it was at the right setting and stable, and how to -- if they're performing calibrations themselves -- which aren't always necessary; some instruments are internally calibrated -- then how to set -- do that same

properly calibrated, wouldn't have a significant effect on the procedure that you would use.

Q. And you said you didn't make the measurements in this case; is that correct?

A. Yes, that's correct.

Q. Who did make the measurements you relied on, the spectral distribution of the --

A. Kevin McGuire.

Q. Anyone else?

A. Not to my knowledge.

Q. Do you know when those measurements were made?

A. No, not specifically.

Q. Were you present during those measurements?

A. No.

Q. Do you know if the -- was the spectroradiometer used to make those measurements?

A. Could you repeat --

Q. Was the spectroradiometer used to make those measurements?

A. Yes.

Q. Do you know if that spectroradiometer was calibrated prior to making those measurements?

A. To my knowledge, it was.

Q. And what's the basis for that knowledge?

A. I visited Kevin's facilities, and he showed me the procedures that he followed in the measurements and repeated one or two examples for me, so I could -- could observe how the measurements were completed.

Q. What procedures did he show you he followed?

A. He showed me the instrument. He showed me his standard lamp for calibrating the instrument and how he set that up to do the calibration. And then he showed me an example measurement on one of the Sylvania bulbs -- at least one. I don't recall exactly -- a couple of bulbs, perhaps.

Q. Is it necessary to calibrate the spectroradiometer before every measurement?

A. No.

Q. How often do you have to calibrate the spectroradiometer?

A. That could vary from instrument to instrument. The longest case might be a year for some instruments. The most frequent would probably be once a day.

Q. What would determine how frequently you have to calibrate the instrument?

A. Well, the stability of the instrument would be one thing. It's, to a degree, the choice of the operator.

process. And then most likely it wouldn't work anymore, so he wouldn't be able to measure it.

Q. Any other ways it might be compromised?

MR. OROPALLO: Object to the form of the question.

A. Well, with respect to these measurements, I don't think so.

Q. Is it possible that Mr. McGuire, in your opinion, scratched the envelope in removing it from the sealed beam enclosure?

MR. OROPALLO: Object to the form of the question.

A. It certainly could be possible.

Q. If the envelope was scratched, would that affect the accuracy of the measurement in the spectroradiometer?

MR. OROPALLO: Object to the form of the question.

A. It wouldn't affect the accuracy of the measurement. It might change the measurement.

Q. How might it change the measurement?

A. You would be measuring a different bulb.

Q. Did you inspect each of the bulbs that Mr. McGuire measured in the spectroradiometer?

Sylvania products?

A. I felt comfortable with the data that were presented to me. It's a very expensive and time-consuming process. I didn't think I needed to repeat it myself.

Q. You mentioned that when you'd present the lamp to the instrument, you would run the lamp at an appropriate voltage; is that correct?

A. Yes.

Q. What did you mean by "appropriate voltage"?

A. I would mean a -- generally, we specify it by current rather than voltage, but the two are related. And that would be the -- the voltage or current level that the lamp is designed to operate at.

Q. How would you determine what a lamp's designed to operate at?

A. Normally, that's specified with the lamp itself on the packaging or on the -- you know, if it was a standard lamp, it would be with a certificate that comes with it.

Q. Was the appropriate voltage that -- voltage that was designed -- that the Sylvania products were designed to operate, was that specified on the packaging?

Or did you look at the packaging of the Sylvania products?

A. Yes, I looked at the packaging.

Q. Was the voltage specified?

A. I believe so.

Q. Do you recall what voltage was specified?

A. No.

Q. Was there a -- do you recall seeing a certificate with the Sylvania products?

A. No, I do not.

Q. Was a voltage -- did you see the packaging for each of the Sylvania products that was tested?

A. I can't say for certain.

Q. Would there be a reason to measure a bulb at multiple voltages?

A. There could be a reason. Sometimes bulbs are used at different voltages, and there might also be a range of normal operating conditions.

Q. Is that specified on the packaging?

A. It might be.

Q. Do you recall there being a range of normal conditions specified on the Sylvania packaging?

A. I don't recall.

Q. Is it your understanding that the Sylvania lamps are

A. I don't think I was talking about daylight when I said that, but --

Q. Okay.

A. -- the process, yes.

Q. Describe for me what you were talking about at that point.

A. I think I was just saying for any desired color that you wanted to produce or spectral distribution -- and daylight could be one of them -- that if you had the output of a lamp at a given location, and you were going to insert a filter in between, you would do that division to calculate the transmittance distribution or the transmittance functions of that filter.

Q. Is that what's done in the equation here in column 23?

A. It's what's done in the -- the simple configuration that I described, yes.

Q. What do you mean, "the simple configuration"?

A. That you just have light and a flat filter, light going directly through it.

Q. And why is it -- what's the importance of it being a flat filter?

MR. OROPALLO: Object to the form of

the question.

Q. Is there an importance of it being a flat filter?

A. If it weren't, then it's possible that the transmittance properties could be different in different parts of the filter, and that could have an effect on the final result.

That's even possible with a flat filter. But a filter that just absorbs light would generally not have that property. It's just a flat -- flat piece of coated glass or something like that.

Q. So in the equation you described, would you use all the variables that are shown in column 23?

A. Typically, no.

Q. What variables would you use?

A. Oh, essentially, that's describing a case where N is equal to one. And so I could say yes, I'd use all the variables. But if I said N equals to one, that actually converts one-minus-N into a zero, and then S* is multiplied by zero, so that goes away, so you wouldn't need it. If you included it, you'd get another answer, so --

Q. So you simplified the formula here in that instance?

A. Yes.

Q. And how would it be simplified?

A. Well, if N is one, you can remove it from the formula and remove the -- the middle terms and square brackets from S*(l) times one-minus-N; since one-minus-N is zero, that whole term would go away. So it would end up being D(l) divided by S(l), which is what we were discussing in words.

Q. So T(l) would be D(l) divided by S(l)?

A. Yes.

Q. And you said that's an instance where N is equal to one; is that correct?

A. Yes.

Q. Now, did you know that because of the -- your reading of the McGuire patent, that T equals -- T(l) equals D(l) over S(l) that you described earlier today?

A. That equation, no, not from the patent.

Q. Did you know that -- how did you -- what's your basis for knowledge of the -- this formula you described earlier today?

A. That's really the definition of transmittance. That's what T(l) is.

Q. Was that known prior to 1996?

A. Certainly, yes.

Q. Now, the formula in column 23 has more terms than

A. I think so.

Q. And how would you determine S*(l) for a given lamp?

A. I think the most practical way would be to do it as a sort of iterative process in designing the lamp, that you would design or build an initial coating, and having access to the distribution of a lamp without a coating, measure it with the setup that you define to be the normal light that you're interested in, and then look at the residual, the difference between what you'd expect from that simple configuration that we were discussing earlier, that it's just a flat filter. That would be a reasonable first approximation, that is, you're just taking a light source, going straight through a flat filter to get a new distribution.

In the real world with real lamps, you're not likely to get that, because there's the potential for light going through at other angles and going back to the area you're interested in, or the coating not being exactly what you specified, whatever the cause is. And I would denote that as being the S* light, the stuff that's not expected from a simple model where all you have is S.

Q. How about for -- you described that as being a

daylight distribution, that the equation would describe that situation.

Q. So in your opinion, if you have a lamp with a -- that produces light substantially identical to daylight, within 30 percent from 400 to 700 nanometers, and that lamp has a light-producing element that's substantially centrally disposed and emits energy from 200 to 2,000 nanometers, and that lamp has a lamp envelope with a coating, then is it your opinion the equation would be met?

A. Yes.

Q. In your opinion, is there any situation in which these three elements, the substantially identical to daylight, substantially centrally disposed and the coating, would be met, but the formula would not?

MR. OROPALLO: Object to the form of the question.

A. I don't think so.

Q. And in order to verify your opinion, could we go through the process we just described to determine S, S*, N for a given lamp, plug them back into the equation to determine if your opinion is correct?

A. You said could we?

Q. Yes.

A. Yes.

Q. And if we determined, based on what you just described, values for N, S* and S and T, and used the D, which is the 3,500 K that Mr. McGuire provided to you, plugged all those values into the formula in the patent, column 23 of the patent, it's your opinion that formula would be satisfied; is that correct?

MR. OROPALLO: Object to the form of the question.

A. Yes.

MR. BANOWIT: Could we mark this as Exhibit 7.

(WHEREUPON FAIRCHILD EXHIBIT NO. 7 - Expert Rebuttal Report of Mark D. Fairchild - WAS MARKED FOR IDENTIFICATION.)

Q. Dr. Fairchild, we've been talking about your expert report on infringement?

A. Yes.

Q. Other than the -- are there any opinions you came to with respect to infringement that are not contained in your expert report?

A. I don't think so.

Q. Is there any further analysis, further work you

the question.

A. I would say no.

Q. Why not?

MR. OROPALLO: Object to the form of the question.

A. It's a description of the process needed to design the lamps. Normally transmittance is specified independent of any particular object.

Q. Do you understand the invention claimed in the '017 patent is a process for making a lamp?

MR. OROPALLO: Object to the form of the question.

(Witness perusing document.)

Q. Do you have an understanding as to what is claimed in claim one of the '017 patent?

A. I believe so, yes.

Q. It's your understanding that that's a method of making a lamp?

MR. OROPALLO: Object to the form of the question.

Q. Well, what is your understanding of what is claimed in claim one of the '017 patent?

A. I think it claims a description of a lamp to simulate daylight and the procedure for making